

Marc Toberoff (S.B. #188547)
mtoberooff@toberoffandassociates.com
Jaymie Parkkinen (S.B. # 318394)
jparkkinen@toberoffandassociates.com
TOBEROFF & ASSOCIATES, P.C.
23823 Malibu Road, Suite 50-363
Malibu, CA 90265
Telephone: (310) 246-3333
Facsimile: (310) 246-3101

Alex Kozinski (S.B. # 66473)
alex@kozinski.com
33 Marguerite Drive
Rancho Palos Verdes, CA 90275
Telephone: (310) 541-5885
Facsimile: (310) 265-4653

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SHOSH YONAY, an individual, and
YUVAL YONAY, an individual,

Plaintiffs,

v.

PARAMOUNT PICTURES
CORPORATION, a Delaware
corporation, and DOES 1-10,

Defendants.

Case No. 2:22-CV-3846-PA-GJS

**DECLARATION OF
MARC TOBEROFF IN
SUPPORT OF PLAINTIFFS'
MOTION TO STRIKE
EVIDENCE NOT PRODUCED
DURING DISCOVERY**

Hearing Date: January 8, 2023

Hearing Time: 1:30 P.M.

Location: Courtroom 9A

Judge: Hon. Percy Anderson

Oral Argument Requested

1 I, Marc Toberoff, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I am a principal of Toberoff & Associates, P.C., counsel for plaintiffs
3 Shosh Yonay and Yuval Yonay (“Plaintiffs”) in this action, and a member of the
4 Bar of this Court. I submit this declaration in support of Plaintiffs’ motion to strike
5 evidence not produced during discovery based on my personal knowledge and
6 review of the documents referenced herein. If called and sworn as a witness, I
7 could and would testify competently thereto.

8
9 **PPC First Notified Plaintiffs of the Withheld Document**
10 **on November 20, 2023; The Parties Met and Conferred**

11 2. Paramount Pictures Corp. (“PPC”) informed Plaintiffs for first time
12 on November 20, 2023 of its alleged “preview cut” attached the Exhibit B to the
13 Bertelle Declaration, Dkt. 70-11. Attached hereto as **Exhibit “A”** is the relevant
14 email from PPC’s counsel Molly Lens to me dated November 20, 2023.

15 3. On November 21, 2023, Plaintiffs replied to PPC’s email with a letter
16 explaining that PPC’s untimely production violated Federal Rule of Civil
17 Procedure 37(c)(1) and that Plaintiffs would file a motion to strike if PPC relied
18 on the proposed exhibit in its Opposition to Plaintiffs’ Motion for Summary
19 Judgment. A true and correct copy of Plaintiffs’ November 21, 2023 letter is
20 attached hereto as **Exhibit “B.”**

21
22 **Plaintiffs Served PPC With Targeted**
23 **Document Requests on January 3, 2023**

24 4. Attached hereto as **Exhibit “C”** is a true and correct copy of
25 Plaintiffs’ First Set of Requests for Production (“Requests”), served on January 3,
26 2023.

PPC Agreed to Produce Responsive Documents

5. Attached hereto as **Exhibit D** is a true and correct copy of PPC's Responses and Objections to Plaintiffs' Requests ("Responses"), served on February 6, 2023.

**Rule 37-1 Meet and Confer Letters Regarding
PPC's Deficient Production**

6. Attached hereto as **Exhibit E** is a true and correct copy of a March 6, 2023, Rule 37-1 meet and confer letter regarding PPC's Responses.

7. Attached hereto as **Exhibit F** is a true and correct copy of a September 14, 2023, Rule 37-1 meet and confer letter regarding PPC's Responses.

September 22, 2023 Teleconference

8. On September 22, 2023, the parties held a "meet and confer" teleconference on which I and one of my associates, Spencer Gibbs, were present. During this teleconference, PPC's withholding of relevant responsive documents was discussed at length.

9. During the September 22, 2023 teleconference, I raised numerous issues with PPC's document production, including its failure to produce a single requested video or audio file (except a DVD of the Sequel), including interviews and cuts of the film.

10. During the call, PPC's counsel essentially stonewalled, arguing that PPC had produced all relevant documents; and that any other videos and audio recordings were either irrelevant, not in PPC's possession, or were archived and inaccessible without undue burden.

11. Following the September 22 teleconference, PPC produced a small number of previously withheld documents, including some emails and a single video depicting a flying jet.

The DVD Contains No Authenticating Metadata

12. After receiving the untimely digital file of PPC's alleged "preview cut" on a disc, I checked to see whether it contained any metadata. A review of the file's "properties" on my computer revealed that it did not contain any metadata apart from that associated with the "burning" of the disc itself on November 16, 2023 at 1:49 AM.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 3, 2023, in Malibu, CA.

By: /s/ Marc Toberoff
Marc Toberoff